Supreme Court, U. S.
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IN THE

Supreme Court of the United States

October Term, 1979

No. ~~79~~ 79-1513

MICHAEL HERBERT DENGLER,
Appellant,

v.

ATTORNEY GENERAL, STATE OF MINNESOTA,
Appellee.

ON APPEAL FROM THE SUPREME COURT OF MINNESOTA

JURISDICTIONAL STATEMENT

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IN THE

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No. ———

MICHAEL HERBERT DENGLER,
Appellant,

v.

ATTORNEY GENERAL, STATE OF MINNESOTA,
Appellee.

ON APPEAL FROM THE SUPREME COURT OF MINNESOTA

JURISDICTIONAL STATEMENT

Michael Herbert Dengler, the appellant, appeals from the final judgment of the Supreme Court of Minnesota, dated December 28, 1979, holding that he may not change his name under MINN. STAT. §§ 259.10, .11 (1978) to 1069 (pronounced one zero six nine) despite his claim that the selection of a name is a matter of personal choice involving fundamental constitutional rights.

OPINION BELOW

The opinion of the Supreme Court of Minnesota, which appears in the appendix hereto, p. A-10, *infra,* is reported at 287 N.W.2d 637. The memorandum opinion of the

Minnesota District Court, which appears in the appendix hereto at p. A-2, *infra,* is not reported.

JURISDICTION

The judgment of the Supreme Court of Minnesota affirmed the state district court's denial of appellant's application for a change of name brought under MINN. STAT. §§ 258.19 .11 (1978) and was entered on December 28, 1979.

A notice of appeal to this Court was duly filed in the Supreme Court of Minnesota and Hennepin County District Court, the court possessed of the record, on March 19, 1980 and is reprinted herein at p. A-15, *infra.*

This appeal is being docketed in this Court within 90 days from the judgment below. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(2). A-18.

QUESTIONS PRESENTED

1. Whether appellant's federal constitutional rights to free speech, expression, and privacy require the state courts, pursuant to the statutory name change procedure, MINN. STAT. §§ 259.10, .11 (1978), to recognize his chosen name absent proof that any state interest will be served by denial of his request.

2. Whether appellant has been denied equal protection of law by the refusal of the Minnesota Courts to allow him the benefits of the judicial name change procedure provided under MINN. STAT. §§ 259.10, .11 (1978).

CONSTITUTIONAL PROVISIONS AND STATUTES

First Amendment, United States Constitution:

> Congress shall make no law . . . abridging the freedom of speech . . . .

Fifth Amendment, United States Constitution:

> No person shall be . . . deprived of life, liberty or property, without due process of law . . . .

Ninth Amendment, United States Constitution:

> The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

Fourteenth Amendment, United States Constitution:

> Section 1. * * * No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Minnesota Statutes § 259.10 (1978) (reprinted in the appendix, p. A-18, infra).

Minnesota Statutes § 259.11 (1978) (reprinted in the appendix, p. A-19, infra).

STATEMENT OF THE CASE

Appellant sought a court order pursuant to MINN. STAT. §§ 259.10, .11 (1978), changing his name from Michael Herbert Dengler (the name given him by his adoptive parents) to the name he has chosen for himself, 1069. He has used 1069 as his name for nearly six years (R. 3-4). Sufficient acceptance of his name has occurred to show that, despite its novelty, it is workable (R. 5-9, 12-14). Appellant is recognized as 1069 by the majority of his business and social acquaintances, *e.g.,* his bank (R. 6), the Social Security Administration (R. 7), and sev-

eral Minnesota governmental agencies (R. 8). Other entities, both governmental and private, however, refuse to recognize appellant as 1069 until he can furnish them with a court order as evidence of his change of name, *e.g.*, the Drivers License Division of the Minnesota Department of Public Safety (R. 10-11), and the Minnesota Gas Company (R. 9-10).

At the district court hearing, appellant presented testimony to show that he meets the requirements for a statutory name change as set forth in MINN. STAT. § 259.10 (Supp. 1978). He testified that his choice of name has significance based upon a unique personal philosophy (R. 4). His purposes in seeking to use the legislatively created procedure for a judicial name change are to satisfy those governmental and private entities which refuse to recognize his new name unless he can show them a court order, to simplify his record keeping, and to avoid confusion (R. 14-15).

The district court, despite its determination of appellant's sincerity and lack of fraudulent motive ("petitioner herein is guided by the highest of motives and honesty"), denied the name change because of doubt about its practicality and a personal belief that the requested name change would be offensively dehumanizing.

On appeal the Minnesota Supreme Court reiterated the district court's express finding that the requested name change was not fraudulent. 287 N.W.2d at 638. In addition, the appellate court found that no inherent authority justified the denial, since the chosen name was not racist; obscene; or likely to provoke violence, arouse passions, or inflame hatred. *Id.* at 639. The judgment of the

district court was affirmed, however, on the basis of the Minnesota Supreme Court's belief that the legislature intended changes of name under the statutory procedure only to "an alphabetical 'name' as that word has been historically and traditionally understood." Id.

RAISING THE FEDERAL QUESTIONS

Prior to the district court hearing, appellant filed a Memorandum of Law in Support of Petition which clearly raised the federal rights at issue under the state statutes, as applied. The Memorandum asserted that he was

> * * * entitled, as a matter of self determination in shaping his personal identity, to use any name that he wishes, so long as that name is not utilized to perpetrate some fraud. He . . . [claimed] this right as a matter of expression and privacy guaranteed him by the first, third, fourth, fifth, ninth and fourteenth amendments to the Constitution of the United States.

Memorandum of Law in Support of Petition at p. 10. The district court, however, although giving passing reference to the "question of petitioner's individual freedom to be known as whatever he pleases," did not address the constitutional issues raised by appellant. Memorandum Opinion at p. A-4.

On appeal to the Minnesota Supreme Court, appellant sought a determination of "whether Appellant's constitutional rights to free speech, expression, and privacy are violated by the lower court's interpretation of the statute and refusal to grant this name change." Appellant's Brief at 1. In support, appellant cited the first, third, fourth,

fifth, ninth, and fourteenth amendments to the United States Constitution. *Id.* at 9-22. The court noted , but adroitly avoided, appellant's constitutional arguments, by interpreting the statutory word "name" narrowly, and claiming that appellant was denied no rights by refusal of his application for a change of name since he retained all of his common law name change rights. 287 N.W.2d at 639-40. In so ruling, the Minnesota Supreme Court foreclosed appellant from equal access to the Minnesota statutory name change procedure. It is that foreclosure that occasions appellant's claim for the first time in this Court of a denial of equal protection of law in violation of the fourteenth amendment.

THE QUESTIONS ARE SUBSTANTIAL

It is important that this Court require reasoned elaboration from the states of the respective roles of the individual and the state in the choice of a personal name—the cornerstone of personal identity. The state courts in this case have ignored or avoided the important constitutional rights relied upon by appellant. Similar treatment was previously given appellant by the North Dakota courts. *Petition of Dengler*, 246 N.W.2d 758 (N.D. 1976). Appellant has thus had his personal choice of a new name sacrificed to the personal distaste of a series of state judges.

The phenomenon of uncontrolled discretion is not new. For example, in 1936, a New York state court judge denied the petition of one Murray Cohen to change his name to Louis Murray Kagan. Mr. Cohen argued that the new name would assist him in his career because of

its euphony, distinction, and relative infrequency in the telephone directory. The trial court, however, rejected Mr. Cohen's request and paternalistically determined that the 25 year old petitioner was immature, disrespectful of his roots, and insufficiently aware that "he bears a traditionally old and honored name. . . ." Thus, it "would not aid him in his desire to forswear his original identity by assuming another and totally different one under the circumstances set forth in the petition." *Petition of Cohen*, 163 Misc. 795, 297 N.Y.S. 905, 906 (City. Ct., N.Y. Co. 1936).

Unlike petitioner Cohen, however, appellant has throughout this case invoked the protection of the United States Constitution. But since the state courts in this case have ignored or avoided discussion of the appellant's constitutional rights, unless this Court undertakes to recognize the constitutional dimensions of an individual's right to choose a name free of unjustified governmental restriction, judges throughout the country will continue to feel free to impose idosyncratic restrictions on serious individuals like Mr. Cohen and appellant in their choice of names. Surely forty years of first amendment and privacy law, coupled with knowledge of other societies that have placed severe restrictions on the range of individual choice in personal names, *see, e.g.* Comment, *The Right to Choose a Name*, 8 AM. J. COMP. L. 502 (1959), must now result in increased sensitivity to the issues in this type of case. In 1980 appellant and others seeking a name change should be free from unrestricted discretion of the sort visited on Mr. Cohen in 1936. It is up to this Court to focus attention on the constitutional liberty interests involved in choosing a personal name.

1. The choice of a name is a matter of personal expression and an important and intimate decision which should be independent of unjustified governmental restriction.

Appellant should be entitled, as a matter of self-determination in shaping his personal identity, to choose any name he wishes, when that name is not utilized to defraud and is not so bizarre as to fall within a category of unprotected speech such as obscenity. This right is based upon fundamental constitutional doctrines of freedom of expression and privacy guaranteed by the first, fifth, ninth and fourteenths amendments to the Constitution. *See generally* L. Tribe, AMERICAN CONSTITUTIONAL LAW chs. 11, 12, 15 (1978). An individual's name has great personal significance, Rider, *Legal Protection of the Manifestations of Individual Personality—The Identity-Indicia*, 33 SO. CAL. L. REV. 31-34 (1959). Appellant's case raises very directly the questions of individual choice and freedom from unjustified governmental restrictions on such choice.

The longstanding common law right to self-appellation should be recognized as constitutionally grounded and applicable to legislatively designed procedures such as MINN. STAT. §§ 259.10, .11 (1978). The roots of the right inhere in basic constitutional protection afforded personal autonomy with regard to intimate aspects of self-determination and the expression of one's identity, self-respect, and privacy. *See Roe v. Wade*, 410 U.S. 113 (1973). The choice of a name constitutes action within a sphere of individual autonomy, respecting one of the most personal of life's choices, and thus should be protected by the Constitution from governmental interferences except for the most compelling of reasons. *See* L. Tribe, AMERICAN CONSTITUTIONAL LAW ch. 15 (1978); Tribe, *Toward a Model of Roles in the Due Process of Life and Law*, 87 HARV. L. REV. 1 (1973); Comment, *Roe and Paris: Does Privacy Have a Principle*, 26 STAN. L. REV. 1161 (1974); *cf. Whalen v. Roe*, 429 U.S. 589 (1977).

Recent decisions have recognized the privacy interest in the choice of a name for one's offspring. *Jech v. Burch*, 466 F. Supp. 714 (D. Hawaii 1979); *Secretary of Commonwealth v. City Clerk of Lowell, Mass.*, 366 N.E.2d 717 (Mass. 1977). The instant case involves the corresponding privacy interest in choosing one's own name. The Massachusetts case cited *Forbush v. Wallace*, 341 F. Supp. 217 (M.D. Alt. 1971), *aff'd*, 405 U.S. 970 (1972), for the proposition that an adult woman's freedom of choice is not compelled by the Constitution, 366 N.E.2d at 724. *Forbush*, however, involved not a change of name, but rather the woman's right to use a name different from that of her husband on her Alabama driver's license. Furthermore, the case was treated primarily as a sex discrimination case, and the only opinion, that of the federal district court, applied a minimal level of scrutiny that is clearly inconsistent with this Court's more recent sex discrimination cases, *e.g.*, *Frontiero v. Richardson*, 411 U.S. 677 (1973), *Craig v. Boren*, 429 U.S. 190 (1976); *Califano v. Westcott*, — U.S. —, 99 S. Ct. 2655 (1979).

In *Forbush*, the administrative convenience of the Alabama Department of Public Safety and perpetuation of

the long standing custom of using the husband's name in marriage so as to promote uniformity among the states were accepted as rational state interests. In view of *Frontiero, Craig,* and *Westcott, supra,* such interests would not be sufficient, at least without additional evidence, to establish the substantial relationship to an important state interest now required.

Of primary importance, the *Forbush* opinion was heavily influenced by the availability to the woman of the state's simple statutory name change procedure.

> In balancing these interests, this Court notes that the State of Alabama has afforded a simple, inexpensive means by which any person, and this includes married women, can on application to a probate court, change his or her name. (statutory citation omitted.)

341 F. Supp. at 222. This statutory procedure was viewed as a simple, unrestricted method available to the party complaining of Alabama's common law, customary requirement that the woman acquire the name of her husband. Because it preceded cases requiring a higher standard of review in the area of women's rights; because it involved different considerations of administrative convenience; and because it did not directly raise the underlying constitutional right to pick one's own name, since the district court noted the woman had an unrestricted statutory right to change her name (thus assuming the very right at issue in this case), *Forbush* is not controlling in this case. It is precisely because of Minnesota's unsupported restrictions on appellant's use of the statutory procedure that he is appealing to this court.

Although no cases in this Court are directly controlling, appellant's interests are certainly as important to him as those recognized in *Jech* and *Secretary of the Commonwealth, supra,* involving the choice of a name for one's child. In that regard, appellant submits that one's identity interests are akin to and as compelling and deserving of protection as those recognized to be constitutionally protected in *Griswold v. Connecticut,* 381 U.S. 479 (1965) (right to contraceptives); *Cohen v. California,* 403 U.S. 479 (1965) (right to express oneself by wearing, in a court house, a jacket bearing a common four letter word usually considered vulgar and offensive); and *Tinker v. Des Moines School Dist.,* 393 U.S. 503 (1969) (right to wear an expressive armband to school).

More recently, this Court has observed that the protection of freedom of thought under the first amendment includes both the right to speak freely and the right to refrain from speaking at all. *Wooley v. Maynard,* 430 U.S. 705 (1977). *Wooley* recognized a "broader concept of 'individual freedom of mind,' " *Id., quoting West Virginia State Board of Education v. Barnette,* 319 U.S. 624, 637 (1943). and held that New Hampshire could not require an individual to participate in the dissemination of an ideological message, the state motto, on his automobile license plates. Forcing an individual to become an instrument for fostering public adherence to an ideological point of view he finds unacceptable invades the sphere of intellect and spirit protected from official control by the Constitution. Likewise, the Minnesota courts cannot require appellant to forego using the official procedure for expression of an important aspect of his identity through a change of name.

2. To justify a restriction on the right to change names the state may act only to further an important, clearly identified interest supported by convincing evidence.

Wooley also demonstrates the proper framework for deciding a case involving a constitutional right of this sort. Appellant has not claimed an absolute right to change his name to whatever he pl ases. The state may assert and protect important and legitimate interests. However, the record in this case discloses no countervailing state interest to justify refusing appellant his chosen name. Fraud, the paradigmatic countervailing interest, and the only interest recognized explicitly in the Minnesota statute as sufficient to offset an individual's choice of a new name, is not an issue in this case. Both lower courts recognized appellant's sincerity and lack of fraudulent intent. The Minnesota Supreme Court also found that no category of inherent judicial authority (which might justify preventing a choice that is racist, obscene, or otherwise likely to provoke violence, arouse passions, or inflame hatred) was presented by this case. 287 N.W.2d at 639. Thus, there is no basis for refusal of his name change.

The Minnesota Supreme Court's reliance on perceived legislative intent is misplaced. That court is of course the ultimate interpreter of Minnesota statutes. However, in the face of a claim of constitutional right, speculation about what the legislature might have thought about appellant's unusual name should not suffice to avoid the issues. The legislature vested decisionmaking authority in the Minnesota courts. In exercising that authority, the courts cannot avoid constitutional issues by guessing how

the legislature might have reacted to questions not presented to it, or by imagining evidence neither submitted to nor considered by the legislature or the courts.

The only evidence admitted in this case indicated that difficulties for Minnesota's social or economic systems (R. 25-32). If judicial notice is the unspecified basis for the court's judgment, the propriety and constitutionality of such a questionable procedure should be faced directly, not under the guise of fictionalized legislative intent. Throughout these proceedings appellant has invited a procedure that would consider his constitutional interests and balance them against the state interests. Such a procedure is far different from the reality of the instant proceedings in which his rights have been ignored and the state interests have been neither clearly identified nor adequately demonstrated.

3. Appellant is entitled to equal access to state procedures to accomplish his name change.

In *Forbush v. Wallace*, 341 F. Supp. 217 (N.D. Ala. 1971), *aff'd*, 405 U.S. 970 (1972), the district court noted that Mrs. Forbush suffered minimal harm from the state's common law rule that she acquire the name of her husband upon marriage, since she could use the state's simple statutory procedure to change her name to whatever she wished. In the instant case, the Minnesota Supreme Court has denied appellant the benefits of the parallel Minnesota procedure on the theory that he retains "his liberty to enjoy his common law right to the use of numerals as his name, as long as he is willing to endure the inconvenience which is attendant on asserting that

right." 287 N.W.2d at 640. Thus, the court determined that it need not address appellant's constitutional arguments because, in its view, the state had taken no action to prevent appellant from using his new name officially and "the refusal of the court to act on his application denies him none of the common law rights he now enjoys." 287 N.W.2d at 639 (footnote omitted).

Contrary to the assertion of the Minnesota Supreme Court, the district court did not refuse to act; it acted to *deny* appellant's choice of a new name. The Minnesota Supreme Court affirmed that denial. Instead of recognizing appellant's right under the statute to change his name (to a name the court nonetheless admits he may use as his "official name"), the court denied him the benefits of the legislatively created judicial procedure on the following theory.

> It is time enough to consider the question of appellant's constitutional rights when he can demonstrate that he had [sic] been subjected to something more than trivial and self-inflicted inconvenience by adopting the numeral "1069" as his name. He has available to him the resources of the courts to assert any substantial right which may arbitrarily be refused him because of the mode of identification he has selected for himself.

287 N.W.2d at 639.

The lower court misconceives the nature of appellant's motives. He is not arguing that he has a "right" to force others to utilize his unusual name. He expects no more from the name change procedure than any other Minnesotan utilizing the same procedure. He does not claim the right to go to court to force private individuals to recog-

nize his name. Instead, he seeks equal access to the state created procedures for a simple, authoritative record of his name change. Statutory name changes should be encouraged because of the advantages to both the individual and the state. *See, e.g., In re Knight,* 537 P.2d 1085 (Colo. Ct. App. 1975); *Petition of Buyarsky,* 322 Mass. 335, 77 N.E.2d 216 (1948). The policies were well stated by the Supreme Judicial Court of Massachusetts in *Buyarksy*:

> The . . . statute does not restrict his choice but aids him to secure an official record which definitely and specifically establishes his change of name. We think that it is not only inconsistent with but also desirable in the public interest that the fact that one has commonly used a name for a number of years should be fixed and established by a public record showing that the name adopted has become his legal name. Any confusion that might have attended the use of a name honestly assumed by one is dispelled by a record showing that that name is his legal name.

Id. at —, 77 N.E.2d at 218.

Petitioner asserts a right to fix and establish a public record showing that the name he has adopted has become his legal name. He wishes to use the procedure available to others changing their names. But he has been denied equal access to that procedure. Perhaps the defect in the approach of the Minnesota Supreme Court is best demonstrated by analogy to another important area of individual choice—the choice of a spouse. In some states, marriages through either an informal "common law" method or an official procedure are available. H.

Clark, LAW OF DOMESTIC RELATIONS § 2.-4 (1968). One could readily predict this Court's reaction to an argument by a state with a prohibition of interracial marriages that would justify refusal to issue a marriage license or allow a marriage ceremony on the theory that the parties remain free to live together as common law spouses. Similar illogic is inherent in the reasoning of the court below.

Since appellant argues that he has a constitutional interest in his choice of a name, the courts of Minnesota should not be able to avoid consideration of that interest by relegating him to subsequent case-by-case enforcement of his constitutional rights. This is particularly so because the refusal of the courts to consider his constitutional rights in the first place contributes substantially to his inability to obtain recognition of his new name. Finally, appellant urges that the serious lack of judicial economy implicit in the Minnesota Supreme Court's invitation to subsequent litigation is inconsistent with the purposes of the name change procedure itself:

> * * * to say, as have some lower courts, that the petitioner may still change his name at common law, simply by using another name consistently over a period of time without intent to deceive or avoid obligations previously incurred, even though the court will not approve his application for a judicial name change, is to skirt the issue. These cases seem to involve themselves in extra-legal sermonizing when they use their discretion to prevent speedy, judicial name changes . . . on the basis of the proposed names' unfamiliarity, the unconventional use of a one-word name, the unproven necessity to change one's name when one adopts a new religion . . ., and the pride petitioners should have in their

> original American names . . ., while suggesting the common law remedy if petitioners still want to change their names. In other words, the courts seem reluctant to grant name changes for what they deem silly or insufficient reasons. However, to deny the statutory remedy but suggest the common law remedy seems to promote even greater confusion than the confusion the court sought to eliminate by rejecting the applications.

E. Bander, CHANGE OF NAME AND LAW OF NAMES 23 (1973).

Although it is up to the Minnesota legislature and court to determine how much litigation it wishes to entertain regarding matters of state law, appellant again emphasizes that he has consistently claimed his federal constitutional rights in this case. The refusal to consider those rights in this case is itself a serious burden on them, and thus violates the fourteenth amendment by denying appellant equal protection under the state law permitting name changes.

CONCLUSION

For these reasons, this Court should note probable jurisdiction of this appeal.

Respectfully submitted,

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March 19, 1980.

APPENDIX

STATE OF MINNESOTA — DISTRICT COURT
County of Hennepin — Fourth Judicial District

In the Matter of the Application of MICHAEL HERBERT DENGLER for change of name to 1069.

ORDER FOR JUDGMENT

FILE NO. 740628

The application of Michael Herbert Dengler to change his legal name and designation from Michael Herbert Dengler to 1069 having come duly on for hearing before this Court at a Special Term thereof at the Courthouse in the City of Minneapolis, County of Hennepin, State of Minnesota, on the 28th day of November, 1977, at 9:30 o'clock in the forenoon; Michael Herbert Dengler appearing in person and by his attorneys, Timothy R. Geck and Thomas Lockney; and the Court having heard the testimony and being fully advised in the premises;

Now, Therefore, on motion of Timothy R. Geck and Thomas Lockney, attorneys for said applicant;

It is Hereby Ordered and Adjudged, that application of the Petitioner to change his name from Michael Herbert Dengler to 1069, is hereby denied in its entirety.

Dated this 13 day of February, 1978.

BY THE COURT:

/s/ DONALD T. BARBEAU
Judge of District Court

30 days stay on entry of Judgment.

[Such order was filed on the 13th day of February, 1978 and recorded in the Judgment Book on the 8th day of June, 1978 in the office of the Clerk of District Court, Hennepin County, Minnesota, pursuant to M.S.A. Sec. 259.11.]

MEMORANDUM

This matter is before the Court upon petitioner's motion for an Order granting him a change of name from Michael Herbert Dengler to the number 1069.

Petitioner argues that the number 1069 symbolizes his interrelationship with society and conceptually reflects his personal and philosophical identity. Although some institutions have voluntarily related to him as 1069, others have refused absent a court-ordered change of name.

Prior to this proceeding, petitioner had unsuccessfully attempted to persuade the State of North Dakota to recognize him as 1069. *Petition of Dengler,* — ND —, 246 N.W. 2d 758 (1976). However, for purposes of this hearing the Court has treated petitioner's motion as one of first blush.

The decision to grant or deny a legal change of name is broadly governed by the contours of sound judicial dis-

cretion. While the weight of authority recognizes the right to change one's name personally, the granting of such applications under contemporary statutes is clearly not automatic. See, M.S.A. 259.10, *et seq.;*

> "Circumstances of special significance that would militate against the granting of such an application would be an unworthy motive, the possibility of fraud on the public, or the choice of a name that is bizarre, unduly lengthy, ridiculous or offensive to common decency and good taste." *In Re M,* 91 N.J. Super, 296, 219 A2d 906 at 907 (1966)

Apart from motive on the nature of the name sought, considerations of practicability and common sense are also relevant. Thus, denying a change of name to the single word "Arindam," the Supreme Court of New York noted,

> The judicial approval of the use of a single name would be retrogression to antiquity, cause havoc and chaos in the proper identification and location of persons in this modern day and era, cause serious disruption of official records and lead to all kinds of complications in our economy, largely dependent on credit of easily identifiable persons. The judicial sanction of single names is as extinct as the Dodo bird.
>
> . . . The petitioner may continue to use the name which he desires—"ARINDAM"—to further his altruistic purposes and endeavors, which is his common law right.

While the Court in the instant case is persuaded that petitioner's application for a name change to "1069" is not the product of fraudulent motive, it has nevertheless concluded that his motion should be denied.

At first glance, this case may appear to raise only a question of petitioner's individual freedom to be known as whatever he pleases. However, in the view of the undersigned, it not only presents questions of practical application but also raises troubling questions arising out of the philosophical and social underpinnings of our culture.

The use of digits as identifiers of people is of course not uncommon in our computerized and bureaucracy-laden society. The issue here however is whether a court should impose such numbers as a matter of law upon society at large.

It is the view of this Court that the imposition of numbers upon people, while a necessary accommodation to computers in some contexts, is nevertheless an offense to basic human dignity and is inherently totalitarian. The use of such numbers should be circumscribed and not stamped with the approval of a court of law.

The abject dehumanization and the totalitarian deprivation of dignified human privacy which this Court associates with the imposition of faceless numbers upon persons, is not without historical example.

Indeed, the mose recent and the darkest of such examples is still seen in the flesh of the left forearm of the prisoners of World War II concentration camps. The numbing inhumanity of a nameless but numbered existence is conveyed by a former prisoner, Yehiel Dinur:

> "My writings are the chronicles of the planet Auschwitz. I was there for about two years. Time does not run there as it does here on earth. Every fraction of a second there passes on a different scale of time. The inhabitants of this planet had no names; they had no parents; they were not born there and they did not beget children. They breathed according to different laws of nature. They did not live nor did they die according to the laws of this world. Their name was 'Number . . Katzetnik' "

Hardly a day will pass without news of the bombing, harassment and senseless killing of innocent people who are looked upon by modern terrorists as faceless, nameless non-humans. Dehumanization is widespread and affects our culture like a disease in epidemic proportions. To allow the use of a number instead of a name would only provide additional nourishment upon which the illness of dehumanization is able to feed and grow to the point where it is totally incurable. And with the progression of the disease, it becomes easier and less conscience-provoking to ignore or slaughter other human beings because they remain faceless ciphers.

No one has been more articulate and sensitive than Norman Cousins—the distinguished editor of the *Saturday* Review—in decrying and urging resistance to the corrosive depersonalization of our number-prone world. In a letter to this Court, and in an editorial in a recent issue of the *Saturday Review*, Mr. Cousins writes:

> The most serious battle being waged in the world today is not between conflicting political systems but

between number-prone bureaucracies and individual citizens. Everywhere in the world, whatever the ideology, people are being encumbered and entangled by functionaries who hold sway through triplicate paper forms. Their questions are often as incomprehensible and impenetrable as their underlying purpose is obscure. No sooner are the conditions they impose met than are new obfuscations raised. The functionaries are as obsessive as they are implacable. They are not confrontable; they are gray figures lost in a landscape of long corridors and an infinity of filing cabinets bulging with regulation.

The bureaucrats may speak in different tongues in different parts of the world, but they are equally misunderstood everywhere. Their officialese comes as naturally to its perpetrators as their administrative fines. The tax form alone makes everyone in the world kin. Nothing is more universally recognizable or poignant than the baffled look on the faces of decent but helpless citizens, whether their native habitat is Chile, Chad, or Chicago, when confronted by the need to compute their taxes according to a series of questions whose only object seemingly, is to provide the final triumph of numbers over logic.

The American farmer who wants authorization to shift his crop from soybeans to grain; the Muscovite manager of a bakery who needs approval before he can swap apartments with a bus driver so that both can live nearer their jobs; the young Rumanian language specialist who needs official permission before

leaving her job as a tourist guide in order to teach at the University; the British dentist who finds it easier to fill teeth than government forms after he has done so; the Italian grocer who has prudently put his money in a savings bank, only to have the funds impounded because he forgot to submit the bankbook for interest computation—all these are citizens battered and beleaguered by the bureaucrats. They are victims of a monumental numbers game in which the deck is stacked in favor of the state. Every time people have to queue up somewhere, the bureaucrats score a point against the human race.

In the best of all possible worlds, there might be no harm in allowing Michael Herbert Dengler to be known by a number. But in a world overrun by bureaucrats, replacing even a single human name with a number is like throwing raw meat to lions or a hanging curve to Reggie Jackson. Can anyone imagine anything riskier than fortifying the natural tendency of bureaucrats to forget faces and remember numbers?

The bureaucrats are impelled by a dream of a soulless world in which everything will be known about everyone and in which digits are supreme. The individual's secrets will become as extinct as gracious letters written in artistic longhand. But secrets are precious. They have to do with human failings. They must not be entrusted to computers.

Give the blasted bureaucrats more numbers to play with? Never. Michael Herbert Dengler should be con-

soled, and his assertion of individuality should be redirected. The court could sympathize with him if what he really wanted was to put more distance between himself and bureaucracy; but it would be a mistake to expect the law to set a precedent that could be seized upon by all those in public agencies who think computerese rather than humanese.

This Court in some 18 busy years on the bench has never before been so deluged with free advice from hundreds of citizens than it has received in this case. Some people treat the matter very seriously and some with a certain amount of frivolity, but all are deeply interested and have taken strong positions on both sides of the question.

Some have taken the position that this Court should permit the petitioner to have his number because they believe it is a bright, creative and intelligent idea and that in a democracy, we should be allowed the freedom of individual choice. While these people have compelling reasons to support their view, this Court cannot in good conscience, add to today's inhumanity by giving it the stamp of judicial approval.

Therefore, based upon relevant legal considerations, history, common sense and a strong belief in basic human dignity, this Court will not grant the requested name change, even though petitioner herein is guided by the highest of motives and honesty.

Although spoken in a different context, the words of Iago to Othello have meaning to this case:

"Good name in man and woman dear my Lord,
Is the immediate jewel of their souls:
Who steals my purse steals trash; 'tis
something, nothing; 'Twas mine, 'tis his,
and has been slave to thousands; he that
filches from me my good name
Robs me of that which not enriches him
And makes me poor indeed."
Othello, Act III, Scene 3, Line 15, William Shakespeare

Granting this motion may fulfill one petitioner's desire but it would also hasten that day in which we all become lost in faceless number. The coming of that day will not enrich this petitioner but poorer we all will be indeed.

D.T.B.

LET THE ABOVE MEMORANDUM BE MADE PART OF THE FOREGOING ORDER.

HENNEPIN COUNTY

In the Matter of the Application of MICHAEL HERBERT DENGLER for Change of Name to 1069.

49052
Cal. 246

Otis, J.
Endorsed
Filed December 28, 1979
John McCarthy, Clerk
Minnesota Supreme Court

SYLLABUS

Minn. Stat. §§ 259.10, .11 (1978) dealing with applications for a name change were not intended to authorize judicial approval of a change from a name to a numeral.

Affirmed.

Heard by Sheran, C.J., Otis and Maxwell, JJ., and considered and decided by the court en banc.

OPINION

OTIS, Justice.

The appellant, Michael Herbert Dengler, seeks review of a judgment of the district court denying his application for a change of name. The attorney general has intervened to support the constitutionality of Minn. Stat. §§ 259.10, .11 (1978) which appellant has challenged. We affirm.

The name for which appellant has applied are numerals "1069". The issues presented are: (1) the discretion which a trial court may exercise and the criteria which govern the granting or denying of an application for name change; (2) the constitutionality of Minn. Stat. §§ 259.-10, .11 (1978); and (3) the legislative intent in adopting and codifying the common law right to a name change.

Appellant is a naturalized citizen of German origin who was given the name Michael Herbert Dengler by his adoptive parents. He is divorced and has two minor children who are in the custody of their mother, none of whom are affected by these proceedings.

In this court he assigns no reasons for the selection of "1069" beyond stating that it "has personal significance and relates to his unique philosophy." He argued below that the number "1069" symbolized his interrelationship with society, and conceptually reflected his personal and philosophical identity.

For the past four or five years the name "1069" has been used by appellant and has been accepted by those with whom he has had social and business relationships. That name has been recognized by his bank, the Social Security Administration. and various state agencies including the Department of Employment Services. However, the Minnesota Gas Company and the Drivers License Division of the Department of Public Safety will not recognize the name "1069" without the court order which appellant here seeks.

The pertinent statutes insofar as they are relevant provide as follows:

[Minn. Stat. §] 259.10 [(1978).] PROCEDURE. A person who shall have resided in any county for one year may apply to the district court thereof to have his name * * * changed in the manner herein specified."

[Minn. Stat. §] 259.11 [(1978).] ORDER; FILING COPIES. Upon meeting the requirements of section 259.10, the court shall grant the application unless it finds that there is an intent to defraud or mislead * * *.

1. In denying the appellant's application, the trial court expressly found that it "is not the product of fraudulent motive * * *", but the court was of the opinion that the designation of a person by a number was an "abject dehumanization and totalitarian deprivation of dignified human privacy."

While we tend to agree with the court's assessment of the use of numerals to identify human beings, we are of the opinion that to the extent the dehumanizing consequences of adopting a number as a name are self imposed, the discretion of the court to deny such an application is limited. The statute itself mentions only "intent to defraud or mislead" as grounds for denial. Nevertheless we read into the statute an implicit intent that other factors may be considered, insofar as they are likely to have an undesirable impact on those other than the applicant. If he chooses to adopt a name which simply subjects himself to contempt, ridicule, and inconvenience, he has a common law and statutory right to do so. But if

the name he chooses is, for example, racist, obscene, or otherwise likely to provoke violence, arouse passions, or inflame hatred, clearly the court has inherent authority to deny him judicial approval. This is not such a case, however.

2. The appellant contends that the selection of a name is a matter of personal choice, and a fundamental constitutional right, which government may not restrict for aesthetic or moral reasons, absent legitimate criteria such as fraud or obscenity. This is a matter of free expression and privacy guaranteed by the First, Third, Fourth, Fifth, Ninth, and Fourteenth Amendments of the United States Constitution, appellant claims. It is a right to protect "personal autonomy with respect to intimate aspects of self determination and identity, self respect and privacy" it is argued.

We find it unnecessary to address these constitutional questions. The state has taken no action to prevent appellant from using "1069" as his official name. The refusal of the court to act on his application denies him none of the common law rights he now enjoys.[1]

---

[1]"As regards the surname * * *, custom has universally decreed that a man shall be known by the name of his father. But in England and the United States, at least, this custom is not legally binding; there is no law preventing a man from taking whatever name he has a fancy for, nor are there any particular formalities required to be observed on adopting a fresh surname; but, on the other hand, if a man has been known for a considerable time by the name of his father, or by a name of repute, and he changes it for another, he cannot compel others to address him or designate him by the new one. Neither does the English law recognize the absolute right of any person in any particular name to the extent of preventing another person from assuming it (*DuBoulay v. DuBoulay*, 1869, L.R. 2 P.C. 430). If, however, a person adopts a new name and wishes to have it

It is time enough to consider the question of appellant's constitutional rights when he can demonstrate that he had been subjected to something more than trivial and self-inflicted inconvenience by adopting the numeral "1069" as his name. He has available to him the resources of the courts to assert any substantial right which may arbitrarily be refused him because of the mode of identification he has selected for himself.

3. We affirm for the reason that we are satisfied it was not the intention of the legislature in adopting Minn. Stat. §§ 259.10, .11 (1978) to authorize a court order which changes to a numeral an alphabetical "name" as that word has been historically and traditionally understood. We are not persuaded that the legislature had in mind such a radical departure from precedent as that contemplated by appellant. It is reasonable to assume that if it had been faced with the question at the time of adoption, the legislature would have rejected the proposal for pragmatic reasons, our social and economic system being geared as it is to identifying individuals by letters rather than by numbers. However, that is not to say the

publicly notified and recognized in official circles, the method of procedure usually adopted is that by royal licence." 19 *The Encyclopaedia Britannica*, 159 (1911 11th ed.).

In *In re Merolevitz*, 320 Mass. 448, 450, 70 N.E.2d 249, 250 (1946) the rule was stated thus: "It is well settled that at common law a person may change his name at will, without resort to legal proceedings, by merely adopting another name, provided that this is done for an honest purpose. * * * In jurisdictions where this subject has been regulated by statute it has generally been held that such legislation is merely in aid of the common law and does not abrogate it."

To the same effect are *Traugott v. Petit*, — R.I. —, 404 A.2d 77 (1979), and *Simmons v. O'Brien*, 201 Neb. 778, 272 N.W.2d 273 (1978).

appellant may not, if he chooses, apply for the same name, using words instead of numerals, i.e. "Ten Sixty-Nine" or "One Zero Six Nine."[2] Nothing we here decide would prevent the court from approving a name change fashioned in this manner.

Meanwhile, as we have indicated, the appellant is at liberty to enjoy his common law right to the use of numerals as his name, as long as he is willing to endure the inconvenience which is attendant on asserting that right.

In the Supreme Court of the
State of Minnesota

In the Matter of the Application of MICHAEL HERBERT DENGLER for Change of Name to 1069.

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

No. 49052

Notice is hereby given that Michael Herbert Dengler, the appellant above-named, hereby appeals to the Supreme Court of the United States from the final order of the Supreme Court of Minnesota, affirming the district

[2]It may be appropriate to point out that the use of a Christian name such as "One" and surname "Nine" would not phonetically be unlike the name "Juan Nyen" which are the somewhat unusual but perfectly acceptable names.

court's denial of appellant's requested change of name to 1069, entered in this action on December 28, 1979.

This appeal is taken pursuant to 28 U.S.C. §1257(2).

/s/ THOMAS M. LOCKNEY
School of Law
University of North Dakota
Grand Forks, ND 58202
Counsel for Appellant

/s/ TIMOTHY R. GECK
1310 East Highway 96
White Bear Lake, MN 55110
Counsel for Appellant

[This Notice of Appeal was duly filed in the Supreme Court of Minnesota and the Hennepin County District Court, the Court possessed of the record on March 19, 1980.]

STATE OF MINNESOTA

ss

COUNTY OF RAMSEY

AFFIDAVIT OF SERVICE BY MAIL

Dorothy P. LaFavor, being duly sworn on oath deposes and says that she is a citizen of the United States over the age of twenty-one years, and not a party to the above entitled matter.

That on the 19th day of March, 1980, this affiant deposited in the mailing department of the United States Post Office at White Bear Lake, Minnesota three true

and correct copies of the following document files in the above captioned action:

1. Notice of Appeal to the Supreme Court of the United States of America.

That the copies of the above document were securely enclosed in an envelope with postage prepaid, and addressed as follows:

Warren Spannaus
Attorney General
State of Minnesota
515 Transportation Building
St. Paul, Minnesota 55155

To the best of your affiant's knowledge, information and belief, such address as given above was the actual post office address of the party intended to be served.

That all parties required to be served have been served.

/s/ DOROTHY P. LaFAVOR

Subscribed and sworn to before me this 19th day of March, 1980.

/s/ BARBARA B. BARTHOLDI
Notary Public
Washington County, Minn.

My Commission Expires June 22, 1986.

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* * *

§ 1257. *State courts; appeal; certiorari*

Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:

(1) By appeal, where is drawn in question the validity of a treaty or statute of the United States and the decision is against its validity.

(2) By appeal, where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity.

(3) By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States.

For the purposes of this section, the term "highest court of a State" includes the District of Columbia Court of Appeals.

* * *

MINN. STAT. §259.10 (1978)

PROCEDURE. A person who shall have resided in any county for one year may apply to the district court

thereof to have his name, the names of his minor children, if any, and the name of his spouse, if the spouse joins in the application, changed in the manner herein specified. He shall state in his application the name and age of his spouse and each of his children, if any, and shall describe all lands in the state in or upon which he, his children and his spouse if their names are also to be changed by the application, claim any interest or lien, and shall appear personally before the court and prove his identity by at least two witnesses. If he be a minor, the application shall be made by his guardian or next of kin. Every person who, with intent to defraud, shall make a false statement in any such application shall be guilty of a misdemeanor provided, however, that no minor child's name may be changed without both of his parents having notice of the pending of the application for change of name, whenever practicable, as determined by the court.

MINN. STAT. §259.11 (1978)

ORDER. FILING COPIES. Upon meeting the requirements of section 259.10, the court shall grant the application unless it finds that there is an intent to defraud or mislead or in the case of the change of a minor child's name, the court finds that such name change is not in the best interests of the child. The court shall set forth in the order the name and age of his spouse and each child of the applicant, if any, and shall state a description of the lands, if any, in which the applicant and his spouse and children, if any, claim to have an interest.

The clerk shall file such order, and record the same in the judgment book. If lands be described therein, a certified copy of the order shall be filed for record, by the clerk, with the county recorder of each county wherein any of the same are situated. Before doing so he shall present the same to the county auditor who shall enter the change of name in his official records and note upon the instrument, over his official signature, the words "change of name recorded." Any such order shall not be filed, nor any certified copy thereof be issued, until the applicant shall have paid to the clerk the cost of such record. The fee of the clerk shall be as provided by law. No application shall be denied on the basis of the marital status of the applicant.

Supreme Court, U. S.
FILED
APR 25 1980
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

October Term, 1979

No. 79-1513

MICHAEL HERBERT DENGLER,

Appellant,

vs.

ATTORNEY GENERAL, STATE OF MINNESOTA,

Appellee.

ON APPEAL FROM THE SUPREME COURT OF MINNESOTA

MOTION TO DISMISS OR AFFIRM

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MOTION TO DISMISS OR AFFIRM

The Appellee moves the Court to dismiss the appeal herein or, in the alternative, to affirm the judgment of the Supreme Court of Minnesota on the ground that the question is so unsubstantial as not to warrant further argument.

STATEMENT

This is an appeal from the judgment of the Supreme Court of Minnesota affirming the state district court's denial of appellant's application pursuant to Minn. Stat. §§ 259.10 and .11 (1978) to change his name from Michael Herbert Dengler to 1069.[1]

Appellant commenced this action by the filing of an application to the Hennepin County district court for a change of name pursuant to Minn. Stat. §§ 259.10 and .11 (1978). As noted, appellant sought to change his name from Michael Herbert Dengler to the numerals 1069. In the non-adversary change of name proceeding, appellant introduced testimony concerning both his desire to use the numerals 1069 as his name and his actual use of those numerals as his name for several years preceding the district court action. As described in Appellant's Statement of the Case, he also provided testimony concerning the acceptance by others of his numerical "name" in both private and governmental contexts. In addition, appellant testified that some private and governmental entities have rejected the use of his numerical "name" without the sanction of a court order. Testimony was also presented establishing that appellant met the literal requirement of section 259.11 that the change of name was not sought with the intent to defraud or mislead.

Although the district court found that appellant was not motivated by any fraudulent intent, it denied his application on the ground that the courts should not be used to foster what it perceived as a bureaucratic and dehumanizing trend toward

[1] The text of the statutes involved and the decisions of the courts below are reproduced in the appendix to Appellant's Jurisdictional Statement (hereinafter cited "A- ").

the identification of individuals by numbers rather than names. Appellant appealed this denial to the Supreme Court of Minnesota, asserting that his constitutional rights to free speech, expression, and privacy were violated by the district court's action. Because appellant challenged the constitutionality of the change of name statute as applied to his application, the Attorney General for the State of Minnesota intervened as appellee in support of the statute.

The state Supreme Court affirmed the denial of appellant's application, although on different grounds than those relied on by the district court. The Court concluded that while the district court had some discretion to deny judicial approval of a name change on grounds other than those explicitly stated in the statute, that discretion does not extend to the dehumanizing consequences relied on by the district court. The Court found it unnecessary to address the constitutional issues raised by appellant, concluding:

> The state has taken no action to prevent appellant from using "1069" as his official name. The refusal of the Court to act on his application denies him none of the common law rights he now enjoys.

A-13 (footnote omitted). Finally, the Court concluded that the denial of appellant's application was correct based on its judgment that the Minnesota legislature had not intended Minn. Stat. §§ 259.10 and .11 (1978) to authorize a court order which changes a name to one expressed in numerals rather than letters. It is from that judgment of the Minnesota Supreme Court that appellant has appealed to this Court.

ARGUMENT

Because of the nature of this case and the limited scope of the decision of the Minnesota Supreme Court, this appeal does not present any substantial constitutional question that warrants further argument. Appellant characterizes this case as involving the broad issue of an individual's alleged constitutional right to use any "name" of his choosing — including one composed exclusively of Arabic numerals — free from any unjustified government restriction. However, the question of the existence of such a constitutional right is not presented by this appeal. Appellant is not challenging any state statute, common law rule, or administrative action that precludes him from using the "name" of his choice. To that extent this appeal is distinguishable from cases discussed by appellant. Both *Jech v. Burch*, 466 F.Supp. 714 (D. Hawaii 1979) and *Secretary of Commonwealth v. City Clerk of Lowell*, 366 N.E.2d 717 (Mass. 1977) involved state action that dictated the choice of names available to parents in naming their children. Similarly, *Forbush v. Wallace*, 341 F.Supp. 217 (M.D. Ala. 1971), *aff'd* 405 U.S. 970 (1972), was a challenge to Alabama's adherence to the common law rule that a woman assumes her husband's surname on marriage.

In contrast, the judgment of the Minnesota Supreme Court at issue has not imposed any restriction on appellant in the use of his chosen "name," nor has it affirmed or authorized any state action that would inhibit that use. The state court affirmed appellant's common law right to use 1069 as his official name. Because of the absence of any governmental interference with the use of appellant's chosen "name," the state court properly declined to rule on the question of the existence

of constitutional rights that would prohibit such state action,[2] noting that the courts are available to appellant "to assert any substantial right which may arbitrarily be refused him because of the mode of identification he has selected for himself." A-14[3]

Even with respect to the change of name procedure that appellant voluntarily invoked, his choice of names has not been limited by the state. The state court indicated that appellant would not be precluded from utilizing the statutory name change procedure to change his name to "One Zero Six Nine." The limited holding of the state Supreme Court was that, pursuant to its determination of legislative intent, the Minnesota change of name statutes, Minn. Stat. §§ 259.10 and .11 (1978), do not authorize a court to issue an order designating Arabic numerals as a name. The court was merely recognizing that historically and traditionally the term "name" refers to words which, when written, are composed of letters—in our culture using the Roman or Latin alphabet.

Thus, the issue presented is not whether the state procedure unduly restricts appellant's choice of a name, but whether the legislature intended to authorize courts to approve names written in any characters of an applicant's choosing—be it

---

[2] Because appellant challenges the constitutionality of the state statutes only as applied to him and because the state court did not reach the constitutional issue, this case may not fall within the Court's appellate jurisdiction under 28 U.S.C. § 1257 (2). In that event, and if the Jurisdictional Statement is treated as a petition for a writ of certiorari, appellant submits that the petition should be denied for the reasons stated herein.

[3] Appellant testified in the district court that the Minnesota Department of Public Safety had refused to issue a driver's license to him in his chosen name. As the state court intimated, the proper forum in which to balance appellant's asserted constitutional rights against the legitimate interests of the state would be in a direct challenge to such restrictive government action. Thus, the issue would be presented in an adversary setting in which the competing interests could be properly weighed.

Arabic numerals, a foreign alphabet, or Morse code. Indeed, even the names to which we are accustomed are capable of being expressed with a variety of symbols, including other alphabets such as the Greek or Cyrillic. The Minnesota Supreme Court has ruled only that when an individual seeks court approval of his chosen name, the court is only authorized by Minn. Stat. §§ 259.10 and .11 to issue its order in the characters in which names are historically written in our society—that is, Roman letters. Appellee submits that such a ruling is not only reasonable, but is such a *de minimis* limitation on the rights asserted by appellant as not to raise any substantial questions for this Court's consideration.

CONCLUSION

For the reasons stated herein, appellee respectfully submits that the appellant presents no substantial question for the decision of this Court, and the appeal should be dismissed, or, in the alternative, the judgment below affirmed.

Respectfully submitted,

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